**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

**W.P.No. 17783 of 1996**

Date:18.01.2007

Between:

T. Padmanabha Rao.

... Petitioner

and

A.P.S.E. Board rep., by its Member Secretary, Vidyut Soudha, Somajiguda, Hyderabad and three others.

... Respondents.

**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

**W.P.No. 17783 of 1996**

**O R D E R:**

Aggrieved by the order of the 3rd respondent dated 10.11.1995, whereby the petitioner was imposed the punishment of Censure besides treating the period from 01.07.1994 to 17.02.1995 as "dies-non", which order was confirmed by the 2nd respondent, vide memo dated 30.03.1996, the present writ petition is filed.

The petitioner was appointed as an Assistant Engineer with the respondent Board on 30.12.1978, which post was subsequently re-designated as Assistant Divisional Engineer. While working under the control of the Chief Engineer, Visakhapatnam, the petitioner was asked, vide proceedings dated 29.09.1993, to join duty as an Assistant Divisional Engineer in the Cyclone Relief Operations department on 29.09.1993. On completion of Cyclone Relief works, the respondent Board issued B.P. (P&G-PER) Ms. No. 136 dated 29.06.1994 directing posting of staff to needy places. The petitioner was informed, vide proceedings dated 30.06.1994, to relinquish charge and await posting orders. Petitioner would submit that he relinquish charge on 30.06.1994 itself and was awaiting posting orders. According to the petitioner, his wife fell ill on 27.06.1994 and even during the period, he was on compulsory wait, he applied for leave on 21.07.1994 enclosing thereto a medical certificate. The petitioner would contend that the memo dated 14.07.1994, transferring him as an Assistant Divisional Engineer to work under the control of Chief Engineer (Electrical), Srisailam Project, was not served on him and that, in

any event, even according to the said memo dated 14.07.1994, which required the Chief Engineer to issue reposting orders, no reposting orders were issued to him. On coming to know in August 1994, that such a memo transferring him to Srisailam Project had been issued, the petitioner submitted a representation requesting that he be posted in and around Visakhapatnam. On 24.08.1994 he requested for extension of leave. On 10.11.1994 the Chief Engineer, Visakhapatnam forwarded the petitioner's leave application to the Director, Personnel recommending sanction of leave. On 28.01.1995 the Director of Personnel issued orders transferring the petitioner to the control of the Chief Engineer, Visakhapatnam and the Chief Engineer was called upon to give him reposting orders. On 01.02.1995 the Chief Engineer informed the petitioner that he should submit his extension leave application directly to the Board as he was not under the administrative control of the Visakhapatnam zone with effect from 30.06.1994. Leave applications for the months of November, 1994, December, 1994 and January 1995 were returned to the petitioner for being forwarded to the Board directly. On 08.02.1995, the petitioner was issued reposting orders as Assistant Divisional Engineer, (Shift) at Garividi and on 18.02.1995 he joined duty in the said post. The petitioner was informed, vide memo dated 31.01.1994/ 25.02.1995, that he had proceeded on leave from 01.07.1994 to 31.08.1994 and had extended leave upto 30.10.1994 without obtaining prior sanction from the competent authority and his leave applications from 01.07.1994 to 30.08.1994 and extension of leave application from 01.09.1994 to 30.09.1994

and from 01.10.1994 to 31.10.1994 were rejected. The petitioner was informed that, as per clause 15(4) of the A.P.S.E. Board Leave Regulations, his willful absence from duty was treated as unauthorised and disciplinary absence from 01.07.1994 to 31.10.1994 and as “dies non”. Reference is made to memo dated 14.07.1994 whereby he was transferred and posted to the control of Superintending Engineer, D & M Circle/LBPH/Srisailam. The petitioner was directed to report to Superintending Engineer, Srisailam within a week from the date of receipt of the memo and was informed that if he does not report for duty within the stipulated time action as deemed fit would be taken against him. In reply thereto the petitioner, vide letter dated 20.03.1995, informed the Director (Personnel) that, after he was relieved in CERP he had proceeded on leave on medical grounds, that in the first instance he had applied leave upto 31.08.1994 and had submitted the same duly enclosing a medical certificate issued by the Civil Assistant Surgeon, K.G.H. Visakhapatnam, that as per the advice of the doctor he had extended leave from time to time and that his leave applications were also submitted to the Board through the Chief Engineer, Visakhapatnam Zone, Visakhapatnam. The petitioner also informed that his request, for being retained in and around Vizag, was considered sympathetically and he was posted as ADE/Shift/Garividi. The petitioner requested that his case may be considered sympathetically, the proposed action be dropped and his absence regularized to the extent he had leave to which he was eligible. The petitioner submitted a consolidated leave application, for the

period from 01.07.1994 to 17.02.1995, along with a medical sickness and fitness certificate. The Member Secretary of the Board, vide memo on 08.08.1995, referred to the letter of the Chief Engineer, Visakhapatnam on 02.05.1995 that the petitioner had relinquished charge on 30.06.1994, that he had proceeded on leave for two months with effect from 01.07.1994, that he had assumed charge at Garividi on 18.02.1995, and that he had submitted a consolidated leave application for sanction. It is stated therein that the petitioner was unauthorizedly absent, that he had not taken prior permission or sanction from the competent authority and that under Regulation 15(4) the period of absence exceeding thirty days was treated as "dies non" besides taking disciplinary action. The petitioner was asked to show cause as to why the punishment of "Censure" for his unauthorized absence besides treating the unauthorised absence from duty from 01.07.1994 to 17.02.1995 as "dies non" not be imposed on him. In reply thereto the petitioner in his representation dated 06.10.1995 stated that in the first instance he had applied for leave from 01.07.1994 to 31.08.1994 and had submitted the same to the Chief Engineer, Visakhapatnam duly enclosed the medical certificate. The petitioner further stated that he had submitted his leave extension application well in advance through the Chief Engineer, Visakhapatnam zone, Visakhapatnam with reference to his physical condition. A perusal of the letter dated 06.10.1995 would substantiate the petitioner's contention that he had applied for leave from 01.07.1994 to 31.08.1994 on 21.07.1994; from 01.09.1994 to 30.09.1994 on 24.08.1994; from 01.10.1994 to

31.10.1994 on 15.10.1994; from 01.11.1994 to 30.11.1994 on 16.11.1994; from 01.12.1994 to 31.12.1994 on 09.12.1994 and 01.01.1995 to 31.01.1995 on 18.01.1995. The petitioner requested the Member Secretary to review the remark that the petitioner was unauthorisedly absent and submitted that he went on long leave only because of physical disability.

In the impugned memo dated 10.11.1995 reference is made to the explanation of the petitioner dated 06.10.1995 and to the fact that he had submitted his leave applications well in advance through the Chief Engineer, Visakhapatnam. However the Member Secretary, in the said order dated 10.11.1995, merely states that on examination of the petitioner's application it was decided to confirm the punishment of censure besides treating his unauthorised absence from 01.07.1994 to 17.02.1995 as "dies non", as his explanation was not convincing. No reasons are given as to why the Member Secretary found the petitioner's explanation not convincing. The fact that the petitioner had submitted his leave application periodically and in advance to the Chief Engineer is not disputed. The order of the Member Secretary dated 06.11.1995 is bereft of reasons. The petitioner reiterated the very same contentions in his appeal to the Chairman of the Board and the Chairman rejected the petitioner's appeal holding that the points put forth by the petitioner were already examined and that the appeal did not merit consideration.

It is well settled that an order, which affects rights of parties and results in civil consequences, must record reasons in support of its findings and conclusions. I n **Ambati Srinivasulu Vs.**

**District Collector, Nellore**[1], a Division bench of this Court observed:-

"……Rules of natural justice are multi faceted and multi dimensional. Different facets of these rules have been applied by the Courts in India to invalidate administrative as well as judicial, quasi-judicial actions and orders. One of the facets of the rules of natural justice is that all judicial, quasi-judicial and even administrative authorities who are entrusted with the task of deciding lis between the parties or passing order which affects the rights, interest or status of a person must record reasons in support of their findings and conclusions and such reasons should be communicated to the person concerned. The requirement of recording reasons by judicial, quasi-judicial and even administrative authorities and communication thereof to the affected persons has been highlighted and reiterated in various judgments of the supreme Court including the often referred decisions in Harinagar Sugar Mills v. Shyam Sundar, AIR 1961 SC 1669, M. P. Industries Limited v. Union of India, AIR 1966 SC 671, Bhagat Raja v. Union of india, AIR 1967 SC 1606, Mahavir Prasad santoshkumar v. State of U. P. , AIR 1970 sc 1302, Travancore Rayons v. UOI, AIR 1971 SC 862, Messrs Ajanta Industries v. Central Board of Direct Taxes, New Delhi, air 1976 SC 437, Messrs Siemens engineering and Manufacturing Company v. Union of India, AIR 1976 SC 1785, s. N. Mukherjee v. Union of India, AIR 1990 SC 1984, Charan Singh v. Healing touch Hospital, 2001 (1) ALD 6 (SC) = (2000) 7 SCC 668, State of Punjab v. Bagh Singh, (2004) 1 SCC 547 = 2004 aild 204 (SC), State of Orissa v. Dhaniram Luhar, (2004) 5 SCC 568 = 2004 AILD 277 (SC), State of Rajasthan v. Sohan Lal, (2004) 5 SCC 573, Cyril lasrado v. Juliana Maria Lasrado, 2005 (1) ALD 29 (SC) = AIR 2005 SC 1367 = 2004 AIR SCW 7204 = (2004) 7 scc 431, Mangalore Ganesh Beedi Works v. CIT, (2005) 5 SCC 75 and Manorama sachan v. Lucknow Development authority, (2005) 9 SCC 425….."

While it is the petitioner's specific case that he had applied leave periodically and in advance to the Chief Engineer, Visakhapatnam, no reasons are given in the impugned order in support of the conclusion that the petitioner's absence should be treated as unauthorised, more so when it is not in dispute that the petitioner had submitted leave applications periodically.

Sri A. Veeraswamy, learned Counsel for the petitioner, would place reliance on a circular memo, issued by the respondent Board dated 08.08.1996, which requires the competent authority to

take a decision on the leave application submitted by an employee within a reasonable period i.e., ten days from the date on which leave was applied for and to pass appropriate orders either sanctioning or rejecting such a request. Learned Counsel would submit that, despite periodical applications being submitted by the petitioner, no orders were passed on the leave application and it was for the first time on 01.02.1995 that the Chief Engineer had advised the petitioner to submit leave applications directly to the Board and it was for the first time that the Deputy Secretary (Services) of the Board, vide memo dated 31.01.1995/25.02.1995, had informed him that his leave applications were rejected. Learned Counsel would also refer to the averment, in the counter-affidavit, to the effect that in case a request for leave on medical grounds was not made before transfer, or permission, the period of absence would be treated as unauthorized absence and that such an employee would be liable for disciplinary action as per Regulation 15(4) of the A.P.S.E. Leave Regulations. Learned Counsel would submit that, since the petitioner had submitted leave applications well in advance and periodically to the Chief Engineer, his absence could not be treated as unauthorized. Learned Counsel would also point out that the petitioner had since retired from service and the action of the respondents, in not regularizing this period of seven and half months, had resulted in the petitioner suffering monetary loss in excess of Rs.1,00,000/-.

Sri Samineni Kishore, learned Standing Counsel for the respondent, would submit that, while the petitioner was transferred vide memo dated 14.07.1994 and relieved on 30.06.1994, he had

submitted his leave application on 24.07.1994 and that he had proceeded on leave without obtaining prior sanction. According to the learned Standing Counsel, the petitioner had proceeded on leave only with a view to avoid joining at Srisailam project where he was earlier transferred to. Learned Standing Counsel would submit that, since the period of unauthorized absence was for a long duration of seven and half months, the respondents were justified in invoking the provisions of Rule 15(4) of the A.P.S.E. Board leave Regulations and in treating the period of absence as "dies non".

The order treating the period of absence as "dies non" has resulted in the petitioner's suffering adverse civil consequences and has affected his rights. Any order which results in civil consequences must be based on reasons. Both the order of the 3rd respondent dated 10.11.1995 and the 2nd respondent dated 30.03.1996 are bereft of reasons and must be set aside. Both the orders are accordingly quashed. Since the petitioner has retired from service, the 3rd respondent shall consider the facts and circumstances of the case in its entirety, take an appropriate decision and pass a reasoned order in accordance with law within a period of three months from the date of receipt of a copy of the order.

The writ petition is disposed of accordingly. No order as to costs.

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Date: 18.01.2007 RAMESH RANGANATHAN, J

MRKR

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[1] 2006(1) ALT 273 (D.B.)